

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**FOX NEWS NETWORK, LLC and
CHRISTOPHER WALLACE,**

Plaintiffs,

vs.

**ROBIN CARNAHAN FOR SENATE,
INC.,
Defendant.**

Case No. 10-00906-CV-W-GAF

ORDER

Now before the Court is Plaintiffs Fox News Network, LLC and Christopher Wallace's (collectively "Plaintiffs") Motion for Clerk's Entry of Default pursuant to Federal Rule of Civil Procedure 55(a). (Doc. # 22). Plaintiffs argue Defendant Robin Carnahan for Senate, Inc. ("Defendant") has failed to timely answer or otherwise respond to its Amended Complaint (Doc. # 18) and, therefore, an entry of default judgment in Plaintiffs' favor is proper. (Doc. # 22). Defendant opposes. (Doc. # 23).

Plaintiffs filed their original Complaint (Doc. # 1) on September 15, 2010. Defendant received service of the original Complaint on September 17, 2010. (Doc. # 11). On October 8, 2010, Defendant filed a motion to dismiss Count I of Plaintiffs' original Complaint. (Doc. # 15). Plaintiffs then filed and served Defendant with an Amended Complaint on October 25, 2010. (Doc. # 18). On November 17, 2010, the Court denied Defendant's motion to dismiss as moot. (Doc. # 21). On November 26, 2010, Defendant filed its Answer to Plaintiffs' Amended Complaint. (Doc. # 25).

Federal Rule of Civil Procedure 15(a)(3) addresses timing of a response where a pleading has been amended, stating, "[u]nless the court orders otherwise, any required response to an

amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.” Rule 12(a)(4), entitled “*Effect of a Motion*,” states, in relevant part, “[u]nless the court sets a different time, serving a motion under this rule alters [the general time to serve a responsive pleading] as follows: (A) if the court denies the motion or postpones its deposition until trial, the responsive pleading must be served within 14 days after notice of the court’s action.”

A fair reading of both Rule 15(a)(3) and Rule 12(a)(4) leads the Court to find Defendant has timely responded to Plaintiffs’ Amended Complaint. Defendant did not respond to Plaintiffs’ Amended Complaint within fourteen (14) days of its service. However, under Rule 12(a)(4), Plaintiff had fourteen (14) days from November 17, 2010, the date the Court issued its Order denying Defendant’s motion to dismiss, in which to file a responsive pleading to the original Complaint. Thus, Defendant had up to and including Wednesday, December 1, 2010, to respond to Plaintiffs’ original Complaint, i.e., the later date for filing a response under Rule 15(a)(3). Because Defendant filed its response to Plaintiffs’ Amended Complaint on November 26, 2010, Defendant’s response was timely. Accordingly, it is

ORDERED that Plaintiffs’ Motion for Clerk’s Entry of Default is DENIED.

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: December 10, 2010